



Tennessee State Board of Accountancy
Department of Commerce and Insurance
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MINUTES

TENNESSEE STATE BOARD OF ACCOUNTANCY MEETING

November 15, 2002

The meeting of the Tennessee State Board of Accountancy convened in the Davy Crockett Tower, Nashville, Tennessee on November 15, 2002, at 8:00 am.

Members present were L. Dan Johnson, Chairman; David Curbo, Vice-Chairman; Micheal Vaughn, Secretary; Mark King, Charles Frasier, Deborah Henderson, Mickey Ison, Grady Williams, Mark Layne, and Maxie Patton.

Also present were Darrel Tongate, Executive Director; M. Connaught O'Connor, Staff Counsel; Leona Holston, Administrative Assistant; Linda Biek, Investigator; Dan Syriac, Administrative Manager; a court reporter and Administrative Judge Joyce Grimes Safely.

Dan Johnson called the meeting to order at 8:00am. Mr. Johnson asked for a motion to approve the minutes from the August 27, 2002, Board meeting. Grady Williams motioned to approve the minutes for the August Board meeting. Mickey Ison seconded the motion; it was voted on and passed. Mr. Johnson asked for a motion to approve the minutes from the October 3, 2002, Telephonic Board meeting. Grady Williams motioned to approve the minutes for the October Telephonic Board meeting. Mickey Ison seconded the motion; it was voted on and passed.

Darrel Tongate presented the Executive Director's Report: (see attached report)

- 1) Darrel announced the 2003 tentative Board Meeting dates and the Board voted on the following dates.
 - March 20th
 - June 23rd (The TSCPA Conference is in July)
 - August 25th
 - November 14th

Connaught may have cases to close which would necessitate a Board Meeting on January 17, 2003. We will let you know in December if the January meeting is scheduled or canceled.
- 2) NASBA's next annual meeting is in Maui Hawaii. The State will pay travel for the Executive Director and two Board Members. Also, NASBA will pay for five Board Members to attend.
- 3) Thank you to all who helped with the November Exam.
- 4) NASBA has asked Darrel Tongate to be on their Professional Ethics Committee.
- 5) An AICPA/CPA2BIZ advertisement regarding referral fees was presented to the Board. A discussion was held regarding what we want to do, investigate, file complaint, etc. Dan Johnson suggested that we send a letter and inform CPA2BIZ what the Law is in Tennessee and that licensees must comply with the Law, if not, the licensee is subject to having a complaint filed against them.
- 6) Attached is a three-year report of the Board's revenue and expenses.
- 7) Attached is a report of the financial history since 1990.
- 8) Attached is the response to Bob Jones University, a non-accredited college whose students do not qualify to sit for the CPA examination in Tennessee.

- 9) Florida has a Temporary CPA license fee of \$400 per engagement. The Board asked Darrel to send a letter to the Florida Board informing them that our law and rules, 0020-1-.13(a), say that our Board should charge each out-of-state CPA what their state charges our CPA's.
- 10) Carryover CPE. Do you still like it or can we consider eliminating it next year? This will be addressed later by the CPE Committee.
- 11) The CPA exam content has been revised. See the attached form for the breakdown of the Computerized CPA exam content.
- 12) NASBA Board Meeting minutes are available.
- 13) The Attorney General's office subpoenaed our office for all of the records of one of our licensees. All confidential information was marked as such.
- 14) An up to date policy manual is on your desk for you to keep.
- 15) Rule changes regarding the exam conditioning may be needed.
- 16) The NASBA Focus questions were reviewed and discussed. David Curbo motioned to accept the Focus Question answers. Mike Vaughn seconded the motion; it was voted on and passed.
- 17) Mexico reciprocity agreement is attached. The Board agreed to wait until we get the REAL agreement before they vote to accept or not.

BREAK

FORMAL HEARING #1: (Default Hearing because the Respondent did not appear.)

Dan Johnson turned the floor over to Judge Joyce Grimes Safely. Judge Safely made opening remarks including the docket # 12.19-003291A, the case of the Tennessee State Board of Accountancy VS Arthur Andersen, LLP. Judge Safely asked the Board Members to introduce themselves for the record. Dan Johnson pronounced there was a quorum of the Board present. Judge Safely asked the Board Members to recuse themselves if they have had any outside contact regarding this case. Micheal Vaughn recused himself as he has had contact with staff members of Arthur Andersen relative to the matter before the Board. Connaught O'Connor represents the State and the respondent is not present or represented. Notice of the hearing was sent to the respondent, and a copy of such along with the UPS tracking information was presented to the Judge by Connaught O'Connor. This was admitted as evidence as Exhibit #1. The Judge asked the Board to vote to proceed or adjourn. Mickey Ison motioned to proceed with the hearing. Deborah Henderson seconded the motion and a vote was taken. All Board Members voted to proceed. Technical record was admitted, the Notice of Hearing, see attached #A. Connaught O'Connor made her opening statement. Arthur Andersen was convicted of criminal obstruction for intentional shredding of documents by the U.S. District Court. Certified criminal conviction records and the jury verdict were entered as Exhibit #2. Arthur Andersen's revocation of their Texas license was admitted as Exhibit #3. A conviction and revocation by another state is a direct violation of our Law 62-1-111A (4), 62-1-111A (6) and 62-1-111A (8) and Rules 0020-4-.03(1) and 0020-4-.03(2). Connaught O'Connor asked the Board to revoke the three Tennessee firm permits held by Arthur Andersen.

Ms. O'Connor asked to speak on behalf of Arthur Andersen and asked the Board not to include the two charges in our records to revoke but to accept Arthur Andersen's closure and their conviction in Texas.

Ms. O'Connor passed out the Proposed Finding of Facts & Conclusion of Law, see attached #B. The Judge directed the Board Members in their decision regarding the Law & Rules to make findings of fact solely by the evidence presented in this hearing. All motions must carry by majority of the Board.

Findings of Fact:

- 1) David Curbo motioned to find sufficient evidence that on June 15, 2002, Arthur Andersen was found guilty by jury verdict of felony obstruction of justice, Title 18, United States Code, Sections 1512 (b)(2) and 3551 et seq. In the United States District Court for the Southern District of Texas, Houston Division, Criminal Number H02-121. The criminal case related to the Respondent's audit of the Enron Corporation, its subsidiaries and associated entities. The jury found Arthur Andersen guilty of shredding documents related to Arthur Andersen's engagement of the Enron Corporation with the intent to cause and induce Arthur Andersen's partners and others to withhold records and documents from

regulatory and criminal proceedings and investigations. Mickey Ison seconded the motion; it was voted on by roll call with all votes affirmative.

- 2) David Curbo motioned to find sufficient evidence that on August 16, 2002, Arthur Andersen's firm license number P04508 issued by the Texas State Board of Public Accountancy was revoked through an Agreed Consent Order based on the jury's verdict finding Arthur Andersen guilty of felony obstruction of justice in the United States District Court for the Southern District of Texas, Houston Division, Criminal Number H02-121. Mickey Ison seconded the motion; it was voted on by roll call with all votes affirmative.
- 3) David Curbo motioned there was sufficient evidence that the Jury verdict and the Texas revocation resulting from the verdict against Arthur Andersen were based on acts and conduct that involve dishonesty and fraud. In addition, Arthur Andersen's intentional shredding of documents related to Enron Corporation, its subsidiaries and associated entities for the purpose of withholding records and documents from regulatory and criminal proceedings and investigations reflect adversely on the licensees' fitness to practice public accountancy. Deborah Henderson seconded the motion; it was voted on by roll call with all votes affirmative.

Conclusion of Law:

- 1) David Curbo motioned that the Board conclude that the fact that the Respondent's license was revoked violates Tennessee Code Annotated 62-1-111(a) (4) "Revocation or suspension of the right to practice before any state or federal agency." Mickey Ison seconded the motion; it was voted on by roll call with all votes affirmative.
- 2) David Curbo motioned that the Board find it has been presented sufficient evidence that the Respondent's acts & conduct constitute further violations of Tennessee Code Annotated 62-1-111(a) (8) "Conviction of a felony, or any crime an element of which is dishonesty or fraud, under laws of the United States, of this state, or of any other state or country if the acts involved would have constituted a crime under the laws of this state." Mickey Ison seconded the motion; it was voted on by roll call with all votes affirmative.
- 3) David Curbo motioned the Board has sufficient evidence that Arthur Andersen did violate Tennessee Code Annotated, Rule 0020-4-03(1) (c) "Violations of the Act or of rules promulgated under the Act..." and 0020-4-03(2) "Conduct reflecting adversely upon the licensee's fitness to perform services." Grady Williams seconded the motion; it was voted on by roll call with all votes affirmative.
- 4) David Curbo motioned that the Board find the Respondents acts did violate Tennessee Code Annotated 62-1-111(a) (6) "Violation of any provision of this chapter or rule promulgated by the Board under this chapter or violation of professional standards." Grady Williams seconded the motion; it was voted on by roll call with all votes affirmative.

Disciplinary Action the Board Intends to Take:

Deborah Henderson motioned for the Board to revoke the firm permits held by the three Arthur Andersen offices in Tennessee, #22, #23 and #24. Mickey Ison seconded the motion; it was voted on by roll call with all votes affirmative.

Policy Statement:

David Curbo motioned to adopt the following policy statement. The Tennessee State Board of Accountancy is charged with the duty to regulate the practice of Accountancy in the State of Tennessee and to protect the public of this State. The statute allows the Board to discipline a licensee for revocation of their license to practice in another state for cause and for conviction of a felony under the laws of the United States. In the case of Arthur Andersen, LLP, in order to safeguard and promote the life, health and property of the citizens of Tennessee, the Board having given approval to the Allegations of Fact and Conclusions of Law, finds Arthur Andersen, LLP guilty of the offenses as outlined in the Notice of Hearing and Charges. Mickey Ison seconded the motion; it was voted on by roll call with all votes affirmative.

BREAK

FORMAL HEARING #2 This Formal Hearing was continued

FORMAL HEARING #3: Tennessee State Board of Accountancy VS Shirley C. Sturgill

See attached Notice of Hearing, Final Order and Agreed Order. Micheal Vaughn held a Settlement Conference with Ms. Sturgill. The agreed outcome was for Ms. Sturgill to pay \$225 to cover her CPA license fee and the address change fee. Ms. Sturgill agreed to keep her firm closed at this time. However, should she ever choose to practice public accounting in Tennessee again she agreed to obtain a pre-issuance review of her first report and then a full peer review at the end of that year. Mickey Ison motioned to accept this Agreed Order. David Curbo seconded the motion; it was voted on and approved.

FORMAL HEARING #4: Tennessee State Board of Accountancy VS Raymond Lyle

See attached Agreed Order. Micheal Vaughn held a Settlement Conference with Mr. Lyle. The outcome was an immediate five-year suspension, upon approval of the Board. Mr. Lyle agreed that he will not perform public accounting work or tax work, indefinitely, after the five-year suspension. Mr. Vaughn gave a brief summary of the case. David Curbo motioned to accept the Agree Order. Grady Williams seconded the motion; it was voted on and approved.

Connaught O'Connor presented the Attorney's Report/Probable Cause Committee report (copy attached). Informal Conferences were held on the following cases with the Reviewer Board Member making recommendations of action to the Board. New Case #26 – Mickey Ison motioned to Dismiss. Grady Williams seconded the motion; it was voted on and approved. New Case #29 – Mickey Ison motioned to send a Letter of Instruction to include the Standards of Tax Practice. Micheal Vaughn seconded the motion; it was voted on and approved. New Case #30 – Mickey Ison motioned for a Consent Order, Civil Penalty of \$200 and site the Standards on Tax Practice. A discussion then took place among the Board Members. Mickey Ison withdrew his motion. Mark King motioned to send a Letter of Instruction. Micheal Vaughn seconded the motion; it was voted on and approved. New Case #27 – Micheal Vaughn recommended a Consent Order with a Civil Penalty of \$1,000 and to refer this case to the D.A. David Curbo seconded the motion; it was voted on and approved. New Case #28 – Micheal Vaughn recommended we close the case and monitor it as it is a Law Suit. David Curbo seconded the motion; it was voted on and approved. New Case #31 - - Micheal Vaughn motioned to close this case. David Curbo seconded the motion; it was voted on and approved. New Case #32 – Micheal Vaughn motioned to Contact the complainant to make sure they have received all outstanding documents and if so then close the complaint. David Curbo seconded the motion; it was voted on and approved. New Case #34 – Micheal Vaughn motioned to issue a Consent Order for \$20,000 and turn the case over to the D.A. Grady Williams seconded the motion; it was voted on and approved. New Case #37 – Micheal Vaughn motioned to send a Letter of Instruction. Mickey Ison seconded the motion; it was voted on and approved. New Case #23 – David Curbo motioned to send a Letter of Instruction. Micheal Vaughn seconded the motion; it was voted on and approved. New Case #33 – David Curbo motioned to Dismiss. Mark King seconded the motion; it was voted on and approved. New Case #35 – David Curbo motioned to close and monitor. Grady Williams seconded the motion; it was voted on and approved. New Case #36 – David Curbo motioned to refer to the D.A. and to refer the Attorney to the Board of Professional Responsibility. Micheal Vaughn seconded the motion; it was voted on and approved. David Curbo motioned to approve the report and recommendations as amended. Grady Williams seconded the motion; it was voted on and approved.

Micheal Vaughn presented the Peer Review Committee Report. He reported that 508 firms are due peer reviews in 2002. Of those, 482 are scheduled, completed or exempt and 26 have not responded. Mr. Vaughn informed the Board that the Committee and the Sub-Committee may meet on January 17, 2003. The committee approved four letters for exemption from peer review and approved a name change for the firm of McGladrey and Pullen.

LUNCH BREAK**REINSTATEMENT HEARING:** Gary Parsons request for reinstatement, package attached.

Dan Johnson introduced Mr. Parsons and instructed him to make his appeal to the Board to ask for reinstatement of his CPA certificate. He did so. Darrel Tongate informed the Board Members

of the Rule 0020-1-.10 to be addressed regarding reinstatements. Eight steps are required in this rule before reinstatement can be approved. 1) Application to be submitted. 2) Fees to be collected. 3) Address Board to request reinstatement. 4) Board must consider the activity of the applicant since the penalty. 5) Board must decide if the applicant needs to do anything further. 6) The Board must decide if they will impose conditions for reinstatement. 7) Has the applicant complied with the probation and restitution? And 8) CPE records must be produced keeping the applicant in compliance with the CPE requirements. A Question and Answer session took place between the Board Members and Mr. Parsons. Dan Johnson then dismissed Mr. Parsons to discuss with the Board what their decision will be and Mr. Parson will be notified in writing of such decision.

Dan Johnson asked for recommendations from the Board. Darrel Tongate suggested we ask for an annual report of payment for restitution. Dan Johnson recommended we monitor his work activity. Darrel Tongate reminded the Board Members of item #6 in the rule which allows the Board to restrict the applicant in any way. Michael Vaughn addressed the Board Members reminding them that earlier today they issued a Consent Order prohibiting a licensee from ever practicing public accounting again, but the Board did not take his CPA certificate away. Therefore, Mr. Vaughn felt the Board should reinstate Mr. Parson with limitations of NOT doing public accounting. David Curbo commented that he did not feel the Board should prohibit Mr. Parson from doing Tax work. Michael Vaughn suggested we prohibit Mr. Parson from Attest work and require him to pass an Ethics exam. David Curbo recommended that Mr. Parson should be required to come before the Board in the future should he ever want to do attest work, including compilations, and report to the Board annually on his restitution. Maxie Patton recommended the Board clarify in their notice to Mr. Parsons that he can have a firm permit only for tax work at this time and should he come before the Board to request approval to perform attest work, he will be required to complete the Experience Affidavit which is part of the initial firm permit application. David Curbo motioned that the Board accept these stipulations and reinstate Mr. Parsons CPA license. It was voted on and approved.

Grady Williams presented the CPE Committee Report. (Report attached) Mr. Williams reported the following six CPE items and the committee's decisions.

- 1) Foreign Academics Evaluation Services, Rule 0020-2-.01(6) (a) & (b) gives the Board authority to approve such services. The staff has evaluated other such services and recommends to the Board to approve six other services and to continue the one already approved. Grady Williams motioned to approve the evaluation services on this list from the staff evaluations. Mark King seconded the motion; it was voted on and approved.
- 2) Rule 0020-1-.08(7) requires 80 hours of CPE for reinstatement. The Board had a discussion regarding whether this 80 hours also meets the 80 hour CPE requirement for renewal. Grady Williams motioned to accept as the Boards Formal Interpretation that the 80 hours required to meet reinstatement requirements does not meet the 80 hour renewal requirement, this must be an additional 80 hours. David Curbo seconded the motion; it was voted on and approved.
- 3) Grady Williams asked the Board to clarify the rule regarding 2-year accredited universities and non-accredited universities and the courses from those universities being required to be transferred to show up on a four-year university transcript. Charles Frasier commented to the Board that a Jr. College (2-year University) is a 2year freshman and sophomore school and doesn't have Jr. and Sr. courses. Grady Williams motioned to accept as the Boards Formal Interpretation that "courses" from a 2-year college/university must be transferable and show up on a four-year college/university transcript to meet the requirements to sit for the CPA exam in Tennessee. Mark King seconded the motion; it was voted on and approved.
- 4) The Committee recommended to the Board to adopt a policy regarding the type of courses used to meet the 30 hours above the baccalaureate degree to fulfill the 150-hour requirement to sit for the CPA exam. Grady Williams motioned to adopt the following as a **Policy**: **"Courses used to meet the 30 hours above the baccalaureate degree to fulfill the 150-hour requirement to sit for the CPA exam must be in areas that enhance the professional competency and skills of a CPA."** Michael Vaughn seconded the motion; it was voted on and approved.
- 5) The Committee recommends a rule change regarding carryover CPE. Due to the fact that carryover CPE is hard to monitor by staff and licensees are confused by it, the committee

recommends elimination of carryover CPE effective January 1, 2005. This will be addressed more in the next rule making hearing.

- 6) Mr. Williams motioned to approve the issuance of 52 new CPA certificates and 17 reciprocal CPA certificates whose experience and other qualifications have been approved by the Board's staff. Mickey Ison seconded the motion; it was voted on and approved.

Grady Williams presented the Executive/Administrative Committee Report.

Mr. Williams informed the Board that Linda Biek would like to return to a full-time employee on January 1, 2003. Grady Williams motioned to support and approved this request if the Executive Director can find funding in the budget to support the pay for this. Mickey Ison seconded the motion; it was voted on and approved.

Mr. Williams also informed the Board that the old law stipulated a six-year contract for the Executive Director. Grady Williams motioned the Board to continue the Executive Director's (Darrel Tongate) employment. Micheal Vaughn seconded the motion; it was voted on and approved.

Old Business:

Dan Johnson recommended we add Mark King to the Probable Cause Committee to cover the East section of the state and remove him from the CPE committee. All Board Members agreed.

New Business:

Rule Making Hearing: (see attached)

Connaught O'Connor informed the Board that the following three items were left off of the Rules submitted to the A.G.'s office. Rule 0020-6-.04(1) add "after initial review, which must be completed by August 31, of the next calendar year following the initial firm permit date." Rule 0020-6-.04 add (7) "the Peer Review Program of the Board does not provide for reviews of Governmental Entities, Governmental Grant Recipients, Audits of Publicly Traded Companies, or Financial Institution Audits. Those reviews must be obtained through one of the other approved peer review programs." Rule 0020-6-.05(1) (b) add "and completes a refresher review course every five years thereafter." Ms. O'Connor informed the Board that they could do another Rule Making Hearing to include these and go ahead with the Hearing regarding the previously address rules.

Ms. O'Connor called the Rule Making Hearing to order and summarized the rule changes. She informed the Board that they could adopt these changes or they could defer. David Curbo motioned for the Board to adopt the rules as presented today. Mark King seconded the motion; it was voted on and approved.

There being no further business to come before the Board the meeting was adjourned.

CHAIRMAN

SECRETARY